

Small Business Administration

§ 120.931

of the event of default and at least 60 days prior to foreclosure.

(d) *Future advances.* The Third Party Loan must not be open-ended. After completion of the Project, the Third Party Lender may not make future advances under the Third Party Loan except expenditures to collect amounts due the Third Party Loan notes, maintain collateral and protect the Third Party Lender's lien position on the Third Party Loan.

(e) *Subordination.* The Third Party Lender's lien will be subordinate to the CDC/SBA lien regarding any prepayment penalties, late fees, other default charges, and escalated interest after default due under the Third Party Loan.

(f) *Escalation upon default.* A Third-Party Lender may not escalate the rate of interest upon default to a rate greater than the maximum rate set forth in paragraph (b) of this section. Regarding any Project that SBA approved after September 30, 1996, SBA will only pay the interest rate on the note in effect before the date of the Borrower's default.

[61 FR 3235, Jan. 31, 1996, as amended at 64 FR 2118, Jan. 13, 1999]

§ 120.922 Pre-existing debt on the Project Property.

In addition to its share of Project cost, a Third-Party Loan may include consolidation of existing debt on the Project Property. The consolidation must not improve the lien position of the Lender on the pre-existing debt, unless the debt is a previous Third-Party Loan.

§ 120.923 What are the policies on subordination?

(a) Financing provided by the seller of Project Property must be subordinate to the 504 loan. SBA may waive the subordination requirement if the property is classified as "other real estate owned" by a national bank or other Federally regulated lender and SBA considers the property to be of sufficient value to support the 504 loan.

(b) A Borrower is eligible for a 504 loan even if part of the Project financing is tax-exempt. SBA's lien position must not be subordinate to loans made

from the proceeds of the tax-exempt obligation.

§ 120.924 Prepayment of subordinate financing.

The Borrower must not prepay any Project financing subordinate to the 504 loan without SBA's prior written consent.

§ 120.925 Preferences.

No Third Party Lender shall establish a Preference.

§ 120.926 Referral fee.

The CDC may receive a referral fee from the Third Party Lender if the CDC secured the lender for the Borrower under a written contract. The Borrower cannot pay this fee. If a CDC charges a referral fee, the CDC will be construed as a Referral Agent under part 103 of this chapter.

504 LOANS AND DEBENTURES

§ 120.930 Amount.

(a) Generally, a 504 loan may not exceed 40 percent of total Project cost plus 100 percent of eligible administrative costs. For good cause shown, SBA may authorize an increase in the percentage of Project costs covered up to 50 percent. No more than 50 percent of eligible Project costs can be from Federal sources, whether received directly or indirectly through an intermediary.

(b) Generally, the minimum 504 loan must be \$50,000, although, upon good cause shown, SBA may permit a 504 loan as small as \$25,000. The amount of the Debenture must equal the amount of the 504 Loan plus administrative costs.

(c) Upon completion of the Project, the Debenture amount will be reduced by the amount that the unused contingency reserve exceeds 2 percent of the anticipated Debenture.

§ 120.931 504 lending limits.

The outstanding balance of all SBA financial assistance to a Borrower and its affiliates under the 504 program covered by this part must not exceed \$750,000 (\$1,000,000 if one or more of the